

**DISPUTE UNDER CONTRACT FOR THE SALE OF VESSEL**

Section 4 (1) (r) of the Admiralty Act (2017) deals with the above subject claim on dispute arising out of a contract for the sale of the vessel.

A contract for sale of the vessel would include vessel for further trading or a vessel for demolition or a scrap.

There are some clauses under the sales form protecting the interest of the buyer of ship. For example, clause 9 of Sale Form 1993 has provided some limited protection for the buyer. Under the clause 9, the seller warrants that the vessel is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever at the time of delivery. The buyer can claim against the seller for all consequences of claims made against the vessel which have been incurred prior to the time of delivery. If the ship cannot settle down all the mortgages and other claim attached to the ship before the delivery, the buyer can discharge the purchase price to cover this part of claim. Normally, the buyer would also retain part of the payment for around six months to secure there is no any claims and Maritime Liens of the ship.

However, it is difficult for the buyer to terminate the contract even if the vessel still has some encumbrances, mortgages or maritime liens at the time of delivery. Under the English law, the "warranty" is a contractual promise which is not the condition of the contract, so the innocent party can only claim damages but not terminate the contract if there is breach of warranty. Thus, it is difficult for the buyer to terminate the contract.

To terminate the sales and purchase contract, there are two main procedures and the buyer must follow these steps:

Firstly, the buyer should put a notice to inform the seller that there is an encumbrance he/she is aware of and, secondly, the buyer should seek clarification on seller's intention with regard to the encumbrance by specifically referring to Seller's obligations under clause 9 of Sale Form 1993.

If, after the buyer taking the above two steps, the seller fails to remove all the encumbrance in time, the buyer will be entitled to terminate the contract.

The seller is entitled to exercise a possessory lien over the vessel until payment by the buyer. Also, the seller is entitled to resell the vessel to another buyer if the buyer fails to settle the payment in time. An unpaid seller may bring an action to recover the sale cost where the buyer has acquired the property in the ship but refuses or fails to pay the price.

The buyer is entitled to take action for non-delivery of the ship and claim for damages. For the delay of delivery, the buyer can claim for the difference in value of the vessel if the price to buy the other vessel instant is different. Also, the buyer can terminate the contract and claim for damages if the vessel is not delivered after a certain period.

Fundamentally, the main duty of the seller is to deliver the ship in accordance with the terms, conditions and warranties of the contract. The time of delivery may or may not be an essential part of the contract depending on the clause of the contract. If time is of the essence, the buyer can have the option to cancel the contract when delivery is not made by the stipulated date.

Furthermore, the seller also has the obligation to avoid misrepresentation. Although there is no general duty of disclosure and the buyer is free to onboard inspections on the vessel to be purchased, the seller should not induce the other party to enter into the contract by making material representations which are untrue. Statements or assurances made during negotiations leading to a contract may be either "terms" which form the express terms of the contract or just the statements which do not intend to be

part of the contract, but help to induce the contract. Even if the statement is not "Misrepresentation", it is difficult for the buyer to claim for remedies if this misrepresentation does not become a contractual term.

The main duty of the buyer is paying the agreed purchase price of the vessel. Normally, the time of payment is not the essential factor unless there is an express clause in the contract. The buyer must also accept delivery. Payment and delivery should be concurrent unless otherwise stipulated. Of course, the buyer also has the obligations to prevent misrepresentation during the negotiation stage.